Information for Persons Considering Bankruptcy

United States Bankruptcy Court
Western District of Kentucky

December 31, 1998

Table of Contents

What is bankruptcy?

Bankruptcy is a way for a person or business who owes more money than he/she can pay right now (a "debtor") to either work out a plan to repay the money over time, under Chapter 11, 12 or 13, or for most of the bills to be wiped out ("discharged"), as in a chapter 7 case. While the debtor is either working out the plan or the trustee is gathering the available assets to sell, the Bankruptcy Code provides that creditors must stop all collection efforts against the debtor. When the bankruptcy petition is filed by a debtor, the debtor is immediately protected from creditors.

Who can start a bankruptcy?

Any person, partnership, corporation or business trust may file a bankruptcy. If the person or entity who owes the money, referred to as the debtor, starts the bankruptcy, it is called a voluntary bankruptcy. The people or entities that are owed money, referred to as the creditors, can also file a petition against a person or an entity who owes them money, and that is called an involuntary bankruptcy. In an involuntary case, the debtor gets a chance to contest the petition and contend it should not be in bankruptcy. Involuntary cases can only be filed under chapters 7 or 11. Voluntary cases can be filed under chapters 7, 9, 11, 12, and 13. Certain types of entities, such as banks and insurance companies, may not be eligible to file bankruptcy, however, almost all other entities can file a bankruptcy. A business that is NOT a partnership, corporation or business trust, cannot file a separate bankruptcy on its own; those assets and debts would be included in the personal bankruptcy of the owner.

What is a joint petition?

A joint petition is the filing of a single petition by an individual and the individual's spouse. Only people who are married on the date they file may file a joint petition. Unmarried persons, corporations and partnerships must each file a separate case. If a debtor is an individual and has a business which is not a partnership, corporation or business trust, the debtor should list the business as a "dba" (doing business as) on the petition. However, the petition will not be considered a joint petition because the business is not an independently-recognized legal entity.

What are the different "chapters" in bankruptcy?

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases are commonly referred to as "straight bankruptcy" or "liquidation" cases, and may be filed by an individual, corporation, or a partnership. Under chapter 7, a trustee is appointed to collect and sell all property that is not exempt and to use any proceeds to pay creditors. In the case of an individual, the debtor is allowed to claim certain property exempt. In exchange for this, the debtor gets a discharge, which means that the debtor does not have to pay certain types of debts. Corporations and partnerships do not receive discharges. Consequently, any individuals legally liable for the partnership's or corporation's debts will remain

liable. Therefore, individual bankruptcies may be required as well as the corporation or partnership bankruptcy.

Chapter 9 is only for municipalities and governmental units, such as schools, water districts, and so on.

Chapter 13 is the debt repayment chapter for individuals with regular income whose debts do not exceed $1,000,000 ($269,250 in unsecured debts and $807,750 in secured debts), including individuals who operate businesses as sole proprietorships. It is not available to corporations or partnerships. Chapter 13 generally permits individuals to keep their property by repaying creditors out of their future income. Each chapter 13 debtor proposes a repayment plan which must be approved by the court. The amounts set forth in the plan must be paid to the chapter 13 trustee who distributes the funds for a small fee. Many debts that cannot be discharged can still be paid over time in a chapter 13 plan. After completion of payments under the plan, chapter 13 debtors receive a discharge of most debts.

Chapter 12 offers bankruptcy relief to those who qualify as family farmers. There are debt limitations for chapter 12, and a certain portion of the debtor's income must come from the operation of a farming business. Family farmers must propose a plan to repay their creditors over a period of time from future income and it must be approved by the court. Plan payments are made through a chapter 12 trustee who also monitors the debtor's farming operations while the case is pending.

Chapter 11 is the reorganization chapter available to businesses and individuals who have substantial assets and/or income to restructure and repay their debts. Creditors vote on whether to accept or reject a plan of reorganization which must be approved by the court. While the debtor normally remains in control of the assets, the court can order the appointment of a trustee for cause, such as when the debtor does not get a plan approved in a reasonable amount of time, or fails to follow some of the rules, or breaks the law. In addition to the filing fee paid to the Clerk, a quarterly fee shall be paid to the U.S. Trustee in all chapter 11 cases.

There is no debt limit under Chapter 11. However, only a chapter 11 debtor that qualifies as a small business may request expedited treatment under chapter 11. To qualify as a "small business," the debtor must be engaged in commercial or business activities, other than the ownership of real property, and the total of its secured plus unsecured debts must be less than $200,000. Due to the expense and complexity of chapter 11, the decision to file a chapter 11 petition should be made in consultation with an attorney.

What chapter is right for me?

A debtor has a choice in deciding which chapter of the Bankruptcy Code will best suit the debtor's needs. The decision whether to file a bankruptcy, and under which chapter to file depends on the particular circumstances of the debtor. In general, chapter 7 is appropriate when the debtor has insufficient income to pay all or most of his/her debts. Otherwise, if the debtor has an income or

property and can afford to pay all or a substantial portion of his/her debts, chapter 11, 12, or 13 may be appropriate depending on whether the debtor is an individual, partnership, corporation, or family farmer.

These are only a few of the factors to consider, however. There is no way that a simple statement such as this can spell out all the different things to be considered. Because deciding which chapter to select would be giving you legal advice, the Clerk's Office staff cannot help make this decision. Only a lawyer can give you legal advice. Many lawyers charge a modest amount to help debtors and most will give a free consultation, in which they will go over your circumstances and needs and tell the debtor what to do and how much it will cost for them to do it.

The decision whether to file a bankruptcy and under what chapter is an extremely important decision and should be made only with competent legal advice from an experienced bankruptcy attorney after a review of all of the relevant facts of the debtor's case.

Where can I get more information concerning bankruptcy and bankruptcy procedure?

The easiest way to get low or no-cost bankruptcy advice is to make an appointment with a private attorney. Many will provide a free initial consultation during which you can have your questions regarding bankruptcy procedures and their application to your situation answered.

Can the Clerk's Office give legal advice?

A bankruptcy case is a legal proceeding affecting the rights of debtors, creditors and other parties in interest. Pursuant to 28 U.S.C. § 955, Clerk's Office staff are prohibited from giving information which may be characterized as legal advice. Canon 2f and 3 of the Judiciary's Code of Conduct also prohibits the providing of legal advice by the Clerk's Office and further instructs the staff to remain impartial.

While there is no precise definition of legal advice, it includes at a minimum (1) acting on a person's behalf in presenting a claim or defense to a court, and (2) advising a person on the merits of a claim or defense and the state of the law applicable to it. Clerk's Office staff, therefore, will not provide information relating to:

a. the application of laws and rules to individual claims or defenses;
b. whether jurisdiction is proper in a particular court;
c. whether a complaint properly presents a claim;
d. what the "best" procedures are to accomplish a particular objective; or
e. the interpretation of case law.

Clerk's Office staff will not offer any opinion as to the probable disposition of any matter by the

court. The information provided by Clerk's Office staff is limited to explaining the filing requirements of the court and reading, without comment, the actual text of a bankruptcy rule, local rule or statute.

What does the Clerk's Office do?

The Clerk's Office provides a variety of services to the bankruptcy judges, attorneys and the public. The Clerk's Office staff provides clerical and administrative support to the court by filing and maintaining case-related papers, issuing process and writs, signing ministerial orders, collecting authorized fees, sending notices, entering judgments and orders, and setting hearings. The services provided by the Clerk's Office to attorneys and the public include responding to requests for information and making copies of papers in bankruptcy court files.

Although Clerk's Office staff cannot give you legal advice, the U.S. Bankruptcy Court is a source for many forms and local rules which are needed to file a bankruptcy petition and related documents.

What documents do I need to start a bankruptcy?

A complete list of the documents and forms you will need to start a bankruptcy case under any chapter of the Bankruptcy Code is contained in Rule 6 of the Local Bankruptcy Rules for the Western District of Kentucky. The Local Rules are available free of charge from the Bankruptcy Clerk's Office.

The Clerk's Office does not supply Official Bankruptcy Forms or sample plans. However, official Bankruptcy Form sets may be purchased from the following locations:

GRAHAM PIERCE LEGAL PRINTERS
P.O. Box 1866
Fairview Heights, IL 62208
1-800-851-3899

THE CHASE LEGAL COPY SERVICE
125 South 6th Street - Suite 100
Louisville, KY 40202
502-583-4248

Type the information on the forms, and put a response to every question. If your answer to a question is "none," and there is no "none" box to check, put "N/A." Use continuation pages when you run out of room. Sign each form where required. If filing a joint case, make sure that your spouse signs, too.

Prepare your creditor matrix (a mailing list of all your creditors) according to the matrix format instructions. The Clerk's Office uses an Optical Character Reader to scan matrices and if you do not follow the instructions exactly, the scanner will not be able to read the matrix properly. Attached are further details for preparing a matrix.

How do I know if a debt is secured, unsecured, priority or administrative so I can fill out my schedules correctly?

A. Secured Debt

A secured debt is a debt that is backed by property. A creditor whose debt is "secured" has a right to take property to satisfy a "secured debt." For example, most homes are burdened by a "secured debt." This means that the lender has the right to take the home if the borrower fails to make payments on the loan. Most people who buy new cars give the lender a "security interest" in the car. This means that the debt is a "secured debt" and that the lender can take the car if the borrower fails to make payments on the car loan.

B. Unsecured Debt

A debt is unsecured if you have simply promised to pay someone a sum of money at a particular time, and you have not pledged any real or personal property to collateralize that debt.

C. Priority Debt

A priority debt is a debt entitled to priority in payment, ahead of most other debts, in a bankruptcy case. A listing of priority debts is given, in general terms, in 11 U.S.C. § 507 of the Bankruptcy Code. Examples of priority debts are some taxes, wage claims of employees, debts related to goods and services provided to a debtor's estate during the pendency of a bankruptcy case, and alimony, maintenance or support of a spouse, former spouse, or child. If you have questions deciding which of your debts are entitled to priority status, you should consult an attorney.

D. Administrative Debt

An administrative debt is also a priority debt and is one created when someone provides goods or services to your bankruptcy estate. The best example of an administrative debt is the fees generated by attorneys and other authorized professionals in representing the bankruptcy estate.

What are exemptions?

11 U.S.C. § 522(b) allows an individual debtor to exempt real, personal, or intangible property from the property of the estate. Exempt assets are protected by state law from distribution to your

creditors. Bankruptcy exemptions for the state of Kentucky and the dollar amounts of those exemptions are listed in Chapter 427 of the Kentucky Statutes. Typically, exempt assets include jewelry, vehicles up to a certain dollar amount, the equity in your home up to a certain amount, and tools of the trade.

Exemptions are claimed on Schedule C. As with all schedules, it is important to fully complete and provide all the information requested. If no one objects to the exemptions you have listed within the time frame specified by the bankruptcy court, these assets will not be a part of your bankruptcy estate and will not be used to pay creditors through your bankruptcy case.

Deciding which assets are exempt and how and if you can protect these assets from your creditors can be one of the more important and difficult aspects of your bankruptcy case. It is extremely important to consult an attorney if you have any questions regarding the issue of exempt assets.

Where do I file my bankruptcy case?

The bankruptcy court is a federal court. The federal court system divides the United States into judicial districts. Every state has at least one federal judicial district. Many have more. In Kentucky, for example, there are two federal judicial districts. This is the Western District of Kentucky. Due to its size, the U.S. Bankruptcy Court for the Western District of Kentucky has been split into four divisions, with the Louisville office being staffed by the Bankruptcy Clerk's Office. The Clerk's Office is open from 8:30 am. until 4:30 p.m. on all days except Saturdays, Sundays and legal holidays. All correspondence should be mailed to the Clerk's Office at the following address:

Clerk of the Bankruptcy Court
Gene Snyder Courthouse
601 W. Broadway, Suite 546
Louisville, KY 40202

As a general rule, you should file your bankruptcy case in the bankruptcy court for the federal judicial district where you have lived for the greater part of the previous 180 days. You can also file in the district where your principal place of business has been located during the previous 180 days or where the principal assets have been located for that period.

The Western District of Kentucky covers the 53 counties in Western Kentucky indicated below. If your residence, principal place of business or principal assets have been located in one or more of these counties for the necessary period of time, you should file your case in the U.S. Bankruptcy Court for the Western District of Kentucky.

Bowling Green (Division 1):

Adair	Allen	Barren Butler

Casey	Clinton	Cumberland	Edmonson
Green	Hart	Logan Metcalfe	
Monroe	Russell	Simpson	Taylor
Todd	Warren		

Louisville (Division 3):

Breckinridge	Bullitt	Hardin	Jefferson
Larue	Marion	Meade Nelson	
Oldham	Spencer	Washington	

Owensboro (Division 4):

Daviess	Grayson	Hancock	Henderson
Hopkins	McLean	Muhlenberg	Ohio
Union	Webster		

Paducah (Division 5):

Ballard	Caldwell	Calloway	Carlisle
Christian	Crittenden	Fulton Graves	
Hickman	Livingston	Lyon McCracken	
Marshall	Trigg		

How do I "file" a document with the court?

Absent extraordinary circumstances, Bankruptcy petitions, pleadings and other papers may be submitted for filing by mail or in person at the Clerk's Office public counter. When unusual and rare circumstances require delivery of a document to a divisional office, a filing after hours or a filing by facsimile, an emergency filing can be arranged by contacting the appropriate divisional Clerk's Office during business hours.

You should prepare an additional copy of every petition and pleading you submit. The Clerk's Office will file stamp and return the additional copy to you. If your petition is mailed, you must include a self-addressed, stamped envelope of sufficient size to obtain your file stamped copy. The file stamped copy will serve as your record that the original document was filed.

How much are the court fees to file a bankruptcy?

The fees for filing petitions are as follows:

Chapter 7 is $200.00.
Chapter 11 is $830.00.
Chapter 12 is $230.00.

Chapter 13 is $185.00.

For additional fees, please refer to the attached Fee Schedule.

You must pay the required filing and administrative fees regardless of your income. If you cannot come up with the full amount at the time of filing, you may pay the filing fee and administrative fee in installments. To do so, you must complete an application to pay filing and administrative fees in installments and submit it with your petition. The application forms are available at the Clerk's Office.

The Clerk's Office does not accept personal checks from debtors; payments should be made by cash or cashier's check, certified check, or money order payable to "Clerk, U.S. Bankruptcy Court" For your protection, do not send cash in the mail.

What happens after I file bankruptcy?

Upon filing the original petition with the Clerk's Office, the court's restraining order, called the automatic stay, immediately takes effect and prohibits all creditors from taking any collection action against the debtor or the debtor's property. Although the stay is automatic, creditors need to be advised of the stay. The court issues a notice to all creditors advising them of the filing of the bankruptcy, the case number, the automatic stay, the name of the trustee assigned to the case (if filed under chapter 7, 12, or 13), the date set for the meeting of creditors, the deadline, if any, set for filing objections to the discharge of the debtor and/or the dischargeability of specific debts, and whether and where to file claims. The exact information in the notice differs depending on the chapter under which the case is filed.

In a chapter 7 case involving an individual debtor, the creditors generally have sixty (60) days from the first date set for the meeting of creditors to object to the discharge of the debtor and/or the dischargeability of a specific debt. If the deadline passes without any objections to the debtor's discharge being filed, the court will issue the discharge order. If any objections to the dischargeability of specific debts are filed, they will be heard by the court, but will not delay the granting of a discharge with respect to other debts. An objection to discharge or to the dischargeability of certain debts is considered a separate lawsuit (an adversary proceeding) within the bankruptcy and may result in a trial before the judge assigned to the case. Corporate and partnership chapter 7 debtors do not receive discharges. If there are no assets from which a dividend can be paid, the trustee will prepare a report of no distribution and the case will be closed. If there are assets that are not exempt, funds will be available for distribution to creditors. The court will set claims deadlines and notify all creditors to file their claims. The trustee will proceed to collect the assets, liquidate them and distribute the proceeds to creditors. When the assets have been completely administered, the court will close the case.

In a chapter 13 case, creditors are given an opportunity to object to the plan. If no objection is filed by creditors or the trustee, the plan may be confirmed as filed. Once the plan is confirmed, the trustee will distribute the proceeds of the debtor's plan payments to creditors until the debtor completes the plan or the court dismisses or converts the case. Upon completion of the chapter 13 plan, the trustee will prepare a final report, the court will issue a discharge order and the case will be closed.

In a chapter 12 case, the confirmation hearing must be concluded within forty-five (45) days of filing the plan. The court may consider dismissal of the case if a plan is not confirmed.

In a chapter 11 case, a debtor's conference is held with the United States Trustee's staff before the creditors' meeting. At the debtor's conference, the United States Trustee will go over the responsibilities and restrictions on the debtor-in-possession, explain the quarterly fees and monthly operating reports, and generally discuss the financial situation of the debtor and the scope of the anticipated plan of reorganization. A disclosure statement must be filed with the plan and approved by the court before votes for and against the plan can be solicited. After the estate has been fully administered, the court enters a final decree closing the case. A chapter 11 estate may be considered fully administered and closed before the payments required by the plan have been completed.

What is a bankruptcy trustee? Who is the United States Trustee? What is the difference?

In all chapter 7, 12, 13 and in some chapter 11 cases, a case trustee is assigned. In chapter 7 cases they are called "Panel Trustees." In chapter 12 and 13 cases they are called "Standing Trustees." The trustee's job is to administer the bankruptcy estate, to make sure creditors get as much money as possible, and to run the first meeting of creditors, (also called the "Section 341 meeting", because 11 U.S.C. § 341 of the Bankruptcy Code requires that the meeting be held). The trustee either collects and sells non-exempt estate property, as in the case of a chapter 7, or collects and pays out money on a repayment plan, as in the case of a chapter 13. The trustee can require that you provide, under penalty of perjury, information and documents, either before, after, or at the meeting. You should always cooperate with the trustee, since failure to cooperate with the trustee could be grounds to have your discharge denied. Trustees are not necessarily lawyers, and they are not paid by the court. They are appointed by the United States Trustee. The trustees report to the court, but their fees come out of the bankruptcy filing fees or as a percentage of the money distributed to creditors in the bankruptcy.

The United States Trustee's Office is part of the U.S. Department of Justice, and is separate from the court. The United States Trustee's Office is a watchdog agency, charged with monitoring all bankruptcies, appointing and supervising all trustees, and identifying fraud in bankruptcy cases. The United States Trustee's Office cannot give you legal advice, but they can give you information about the status of a case, and you can contact them if you are having a problem with a trustee, or if you have evidence of any fraudulent activity. In monitoring cases, the United States Trustee reviews all

bankruptcy petitions and pleadings filed in cases, and participates in many proceedings affecting the case, but they do not administer the case themselves. They can bring motions in the bankruptcy, such as ones to dismiss the case, or to deny the debtor's discharge.

What is the creditor's meeting? What can I expect will happen at it?

A "meeting of creditors" is the single hearing all debtors must attend in any bankruptcy proceeding. It is held outside the presence of the judge and usually occurs between twenty (20) and forty (40) days from the date the original petition is filed with the court. In chapter 7, chapter 12, and chapter 13 cases, the trustee assigned by the court on behalf of the United States Trustee conducts the hearing. In chapter 11 cases where the debtor is in possession and no trustee is assigned, a representative of the United States Trustee's office conducts the hearing.

The hearing permits the trustee or representative of the United States Trustee's Office to review the debtor's petition and schedules with the debtor face-to-face. The debtor is required to answer questions under penalty of perjury concerning the debtor's acts, conduct, property, liabilities, financial condition and any matter that may affect administration of the estate or the debtor's right to discharge. This information enables the trustee or representative of the United States Trustee's Office to understand the debtor's circumstances and facilitates efficient administration of the case. Additionally, the trustee or representative of the United States Trustee's Office will ask questions to ensure that the debtor understand the positive and negative aspects of filing for bankruptcy.

The hearing is referred to as the "meeting of creditors" because creditors are notified that they may attend and question the debtor about the location and disposition of assets and any other matter relevant to the administration of the case. However, creditors rarely attend these hearings and, in general, are not considered to have waived any of their rights by failing to appear. The hearing usually lasts only a few minutes and may be continued if the trustee or representative of the United States Trustee's Office is not satisfied with the information provided by the debtor. If the debtor fails to appear and provide the information requested at the hearing, the trustee or representative of the United States Trustee's Office may request that the bankruptcy case be dismissed or that the debtor be ordered by the court to cooperate or be held in contempt of court for willful failure to cooperate.

What is a discharge?

The discharge order is issued by the court and permanently prohibits creditors from taking action to collect dischargeable debts against the debtor personally; this does not prevent secured creditors from seizing collateral if payments are not kept up, or other creditors from pursuing property of the estate. Some debts are not dischargeable, and others may be found to be non-dischargeable depending on particular circumstances.

In a chapter 7 case, the bankruptcy court will order that the debtor be discharged of all dischargeable

debts once the time for filing complaints objecting to discharge has expired unless:

a. the debtor is not an individual;
b. a complaint objecting to the debtor's discharge has been filed; or
c. the debtor has filed a waiver of discharge.

In chapter 11 cases, the confirmation of a plan of reorganization discharges the debtor from dischargeable debts that arose before the date of the order of relief unless:

a. the plan or order confirming plan provides otherwise; or
b. the plan is a liquidating plan and the debtor would be denied a discharge in a chapter 7 case under 11 U.S.C. §727

In chapter 12 and chapter 13 cases, the court will order that the debtor is discharged of dischargeable debts after the debtor has completed all payments under the plan, or prior to plan completion, after notice and hearing, if the requirements of 11 U.S.C. §§ 1228(b) or 1328(b) have been met.

The granting of a discharge does not automatically result in the closing of a case. The distribution of assets or the resolution of certain contested matters may require the case to remain open.

What debts are dischargeable?

All debts are dischargeable except for those listed in 11 U.S.C. § 523. The non-dischargeable debts listed in § 523 include:

a. certain taxes and fines;
b. debts created through fraudulent conduct or providing false information to a creditor;
c. debts not listed in your bankruptcy petition;
d. alimony, child maintenance or support, and certain debts arising out of a divorce decree or separation agreement;
e. debts from willful and malicious injury to another,
f. government guaranteed student loans due within seven (7) years before filing your bankruptcy;
g. debts caused by the death or a personal injury related to the operation of a motor vehicle while you were intoxicated; and
h. post bankruptcy condominium or cooperative owners' association fees.

This list includes many examples of non-dischargeable debts but you should review 11 U.S.C. § 523 for a complete list.

Some debts listed in 11 U.S.C. § 523, such as those based on fraudulent conduct, embezzlement or

willful and malicious injury to another, are discharged unless a complaint to deny discharge of that debt is timely filed with the bankruptcy court. Ordinarily, these complaints must be filed within sixty (60) days of the first date set for the meeting of creditors.

Additionally, debts that were not listed on your bankruptcy schedules or that were incurred after you filed bankruptcy are generally not discharged.

What is the difference between a denial of discharge and a debt being non-dischargeable?

A discharge can be denied by the court either for one particular debt or for all debts. For a discharge to be denied, either as to a particular debt or as to all debts, someone must file an adversary proceeding (lawsuit) with the court.

In a lawsuit to deny the discharge as to all debts, the person who brings the action must prove to the court that the debtor did one of the following: (1) transferred, concealed, removed, destroyed or mutilated property of the debtor, (within one year before the bankruptcy was filed) or after the bankruptcy was filed, or (2) concealed, destroyed, mutilated, falsified, or failed to keep and preserve books and records about the debtor's financial condition or business transactions, or (3) the debtor made a false statement while under oath, (in writing or orally), or (4) failed to turn over books and records, or (5) failed to explain the loss of assets, or (6) had received a previous bankruptcy discharge within six (6) years.

To deny the discharge as to one debt only, the creditor must prove that the debtor (1) got the money or thing by making false representations, false pretenses or actual fraud, or (2) used a false statement about his financial condition, the creditor relied on.

What does it mean if a case is dismissed?

A dismissal order ends the case. Upon dismissal the "automatic stay" ends and creditors may start to collect debts, unless a discharge is entered before the dismissal and is not revoked. An order of dismissal itself will not free the debtor from any debt. Often, a case is dismissed when the debtor fails to do something he/she must do (such as show up for the creditors' meeting, answer the trustee's questions honestly, produce books and records the trustee requests), or if it is in the best interests of the creditors. Unless the debtor appeals the order or seeks reconsideration of the order within ten (10) days after entry of the order, the Clerk will automatically close the case.

What is a reaffirmation agreement?

A reaffirmation agreement is an agreement by which a bankruptcy debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. Such an agreement must generally be filed within sixty (60) days after the first date set for the meeting of creditors.

If the reaffirming debtor is represented by an attorney, the agreement is filed with an affidavit of the attorney which complies with 11 U.S.C. § 524(c)(3). No hearing for approval of such an agreement is necessary. If the reaffirming debtor is not represented by an attorney, the debtor or creditor must file an application for approval of the agreement, along with a request for hearing. An order approving the agreement should be brought to the hearing. You must appear in person at the hearing. The judge will ask you questions to determine whether the reaffirmation agreement imposes an undue burden on you or your dependents and whether it is in your best interests. Since reaffirmed debts are not discharged, the bankruptcy court will normally only reaffirm secured debts where the collateral is important to your daily activities.

Reaffirmation agreements are strictly voluntary. They are not required by the Bankruptcy Code or other state or federal law. You can voluntarily repay any debt instead of signing a reaffirmation agreement, but there may be valid reasons for wanting to reaffirm a particular debt.

Since a reaffirmation agreement takes away some of the effectiveness of your discharge, legal counsel is advisable before agreeing to a reaffirmation. Even if you sign a reaffirmation agreement, you have a minimum of sixty (60) days after the agreement is filed with the court to change your mind. If your discharge date is more than sixty (60) days after the agreement is filed with the court, you have until your discharge date to change your mind. If you reaffirm a debt and fail to make the payments as agreed, the creditor can take action against you to recover any property that was given as security for the loan and you may remain personally liable for any remaining debt.

What is redemption?

Redemption allows an individual debtor (not a partnership or a corporation) to keep tangible, personal property intended primarily for personal, family, or household use by paying the holder of a lien on the property the amount of the allowed secured claim on the property, which typically means the value of the property. Otherwise, in order to retain the property, the debtor would have to enter into a reaffirmation agreement and become legally obligated on the debt again. The property redeemed must be claimed as exempt or abandoned.

With redemption, a debtor can often get liens released on personal household possessions for much less than the underlying debt on those secured possessions. Unless the creditor consents to periodic payments, redemption must generally be made in one lump sum payment to the creditor. If the debtor and creditor agree to the redemption, just a consent order of redemption is required. If the redemption is opposed, a motion for redemption and a request for hearing should be filed.

What are claims and claims objections? How are claims filed?

A. Claims

In the broadest sense, a claim is any right to payment held by a person or company against you and your bankruptcy estate. A claim does not have to be a past due amount but can include an anticipated sum of money which will come due in the future. In filing out your Schedules, you should include any past, present or future debts as potential claims.

B. Claims Objections

You are entitled to object to any claim filed in your bankruptcy case if you believe the debt is not owed or if you believe the claim misrepresents the amount or kind of debt (e.g. secured or priority) which you owe. In some circumstances, an objection to claim can be initiated by filing a motion in the bankruptcy court; in other circumstances, it must be initiated by filing an adversary proceeding (like a lawsuit in your bankruptcy case). If you anticipate objecting to claims, you should seek the advice of an attorney as soon as possible since the objection process can be complicated and time sensitive.

C. Filing of Claims

The written statement filed in a bankruptcy case setting forth a creditor's claim is called a proof of claim. The proof of claim should include a copy of the obligation giving rise to the claim as well as evidence of the secured status of the debt if the debt is secured. Under the Federal Rules of Bankruptcy Procedure, with limited exceptions, claims filed by creditors, except governmental units, in chapter 7, 12 and 13 cases must be filed within ninety (90) days after the first date set for the meeting of creditors. Claims of governmental units must be filed within one hundred eighty (180) days of the date the petition was filed. If a creditor files a claim after the specified deadline, you may object to the claim as being untimely filed.

For purposes of obtaining your discharge, it may be important for you to file a claim on behalf of a creditor if that creditor should fail to do so. Under the Federal Rules of Bankruptcy Procedure, you (or in chapter 7 and some 11 cases, the trustee) may file a proof of claim on behalf of a creditor within thirty (30) days after the last day for filing claims.

What can I do if a creditor keeps trying to collect money after I have filed bankruptcy?

If a creditor continues to attempt to collect a debt after the bankruptcy is filed in violation of the automatic stay, you should immediately notify the creditor in writing that you have filed bankruptcy, and provide them with either the case name number and filing date, or a copy of the petition that shows it was filed. If the creditor still continues to collect, the debtor may be entitled to take legal action against the creditor to obtain a specific order from the court prohibiting the creditor from taking further collection action and, if the creditor is willfully violating the automatic stay, the court can hold the creditor in contempt of court and punish the creditor by fine or incarceration. Any such legal action brought against the creditor will be complex and will normally require representation by

a qualified bankruptcy attorney.

How do I change or correct information in the petition, schedules and statements I already filed with the Clerk's Office?

The information contained in your petition, schedules, and statement of affairs is submitted under penalty of perjury. Therefore, you must be certain that it is correct when you sign these documents. If, however, you later discover that something is inaccurate, the documents may be corrected by the filing of an amendment with the Clerk's Office. A fee of $20.00 must be paid to amend schedules of creditors or lists of creditors. The amendment should be made using Local Form 16.7, which is contained in the Local Bankruptcy Rules for the Western District of Kentucky. All amendments must be served upon the United States Trustee and case trustee, and certain amendments must be served upon the creditors affected by the amendment.

What should I do if I cannot make my chapter 13 payment?

If the debtor cannot make a chapter 13 payment on time according to the terms of the confirmed plan, the debtor should contact the trustee by phone and by letter advising the trustee of the problem and whether it is temporary or permanent. If it is a temporary problem and the payments can be made up, the debtor should advise the trustee of the time and manner in which the debtor will make up the payments. Significant changes in the debtor's circumstances may require that the plan be formally modified. If the problem is permanent and the debtor is no longer able to make payments to the plan, the trustee will request that the case be dismissed or converted to another chapter. The determination of whether to modify, dismiss or convert a case requires the same kind of analysis as is needed for the initial decision whether to file bankruptcy and under what chapter. Therefore, the debtor should seek counsel from a qualified bankruptcy attorney before attempting to make such a decision. If the debtor delays making a voluntary decision and cannot make the plan payments, the court may dismiss the case.

My ex-spouse has filed bankruptcy. He/She has listed me as a co-signer on a scheduled debt. What can I do? Does my divorce decree protect me?

If you are a co-obligor with your ex-spouse on a debt, the creditor can require payment from you. Depending on the terms of your divorce decree, you may be able to have certain support obligations under it determined to be non-dischargeable by the bankruptcy court or in state court. You should seek legal advice for a thorough explanation of your rights and obligations in this area as soon as you find out that your ex-spouse has filed a bankruptcy.

How many years will a bankruptcy show on my credit report? How long will it take before I can get credit?

The bankruptcy petition, schedules and plan are a public document and are available to the general public at the Clerk's Office. Credit reporting agencies regularly collect information from the petitions filed and report the information on their credit reporting services. Bankruptcies normally will remain on your credit report for up to ten (10) years and may be taken into consideration by any person reviewing a credit report for the purpose of extending credit in the future. The decision whether to grant you credit in the future is strictly up to the creditor and varies from creditor to creditor depending on the type of credit requested. There is no law which prevents anyone from extending credit to you immediately after the filing of a bankruptcy nor will a creditor be required to extend credit to you. The best way for you to obtain credit in the future is to generate adequate and regular income in the future and pay all of your financial obligations in a timely and responsible manner. Many creditors will not deal with you in the future unless you have already established credit with someone else and demonstrate that you are a reliable debtor. In general it is recommended that, after the filing of a bankruptcy, one learn to live within his/her income and not request credit which is not absolutely necessary.

How can I get information about a case?

Case information may be obtained by telephone, through the mail, or in person at the Clerk's Office public counters.

To permit you around-the-clock access to case information, the Clerk's Office has installed two automated case information systems. The Voice Case Information System, or VCIS, uses a computer-generated synthesized voice device to read case summary information directly from the court's computer in response to touch-tone telephone inquiries. VCIS is provided free of charge. Local calls within the Louisville area may be placed by dialing (502) 627-5660. Long distance callers may access VCIS toll-free by dialing 1-800-263-9385.

The Public Access to Court Electronic Records, or PACER, information system permits the use of any terminal or computer, a modem, and communications software to dial the court's computer and access lists of newly filed cases, case summary information, and docket entries made during the past twelve (12) months. Information on registering for these services and the fees charged may be obtained from the PACER Service Center at 1-800-676-6856.

A public access terminal is located in the Bankruptcy Clerk’s Office in Louisville for use during business hours, and certain inquiries can be made to the Clerk’s Office staff during business hours.

Attached is a memorandum for further details for getting case information.

Do I need an attorney to file bankruptcy?

While it is possible to file a bankruptcy case *pro se*, that is, without the assistance of an attorney, it

is extremely difficult to do so successfully. Hiring a competent attorney is highly recommended. For information about referral programs, contact your local bar association.

What are the consequences of filing for bankruptcy?

Depending on a debtor's financial situation and reasons for filing, the consequences of filing for bankruptcy protection may outweigh the benefits. Those considering bankruptcy should be aware of the following:

a. Filing for bankruptcy protection is not free. There are filing fees, and, if you use an attorney, legal fees.
b. Not all debts are dischargeable. For example, secured creditors retain some rights which may permit them to seize property, even after a discharge is granted; spousal and child support obligations and most tax debts are not dischargeable.
c. Within 15 days of the filing of a bankruptcy petition, schedules of the debtor's assets and liabilities must be filed. Failure to timely file the appropriate schedules will result in dismissal of the bankruptcy and the barring of the debtor from filing again for 180 days (six months).
d. If a case is not dismissed and a discharge is entered by the court, the debtor is prohibited from being granted another discharge in chapters 7 and 11 within six years.
e. Fraudulent information or acts by the debtor are grounds for denial of a discharge and may be punishable as a criminal offense.